Response to Comments For
Title V Permit to Operate
Permit No. V-IL-1716300103-08-01

EPA issued on June 6, 2008 a draft Title V operating permit for Veolia Environmental Services' (Veolia) Veolia ES Technical Solutions, L.L.C. facility at, 7 Mobile Avenue, Sauget, Illinois, on which EPA sought public comment pursuant to 40 C.F.R. Part 71. The comment period ended on July 18, 2008. EPA received timely written comments from Veolia, the Sierra Club and American Bottom Conservancy, Patrick Kernan, Joni Quass, Karen Miller, Deborah McPherson, and Amy Funk. EPA also received oral comments during a July 8, 2008, public hearing. This document summarizes the comments and provides EPA's response to the comments.

Comment 1: The commenter provided a "chronology of Veolia's Title V permitting activity," which it describes as "the history of [Veolia's] Title V permitting activity [that will] ensure that the record is accurate…."

Response 1: EPA has included the commenter's chronology in the record via its comment letter.

Comment 2: The commenter provided a "Chronology of Veolia's MACT compliance activity," which it describes as a detailed history of Veolia's Sauget facility's compliance with the hazardous waste combustor maximum achievable control technology standard (HWC MACT) and pending enforcement actions.

Response 2: EPA has included the commenter's chronology in the record via its comment letter.

Comment 3: The commenter provided information on Veolia's lead and particulate matter (PM) emissions in response to testimony provided at the July 8, 2008, public hearing. The commenter asserts that the data demonstrate that Veolia's emissions of lead and PM are well below applicable limitations.

Response 3: EPA has included the commenter's information in the record via its comment letter.

Comment 4: The commenter stated, in response to testimony provided at the July 8, 2008, public hearing, that Veolia has a permit from the State of Illinois to receive and incinerate Potentially Infectious Medical Waste (PIMW) but has chosen to not receive and incinerate waste meeting this definition. As a result, the facility requires all generators who generate waste that has the potential to be PIMW, to certify in writing that their waste does not meet the definition of PIMW. The commenter asserts that this step ensures that the facility does not receive and incinerate waste meeting the definition of PIMW.

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Response 4: EPA has included the commenter's statement in the record via its comment letter.

Comment 5: The commenter points out that the Statement of Basis, in the general information and facility description sections, incorrectly calls the facility "Veolia ES Technical Services, L.L.C." The correct name is "Veolia ES Technical Solutions, L.L.C."

Response 5: EPA has changed the Statement of Basis to correct the error.

Comment 6: The commenter provided information regarding Veolia's receipt of and response to a Notice and Finding of Violation and a second Finding of Violation.

Response 6: EPA has included the commenter's information in the record via its comment letter.

Comment 7: The commenter states that the permit incorrectly lists the dates of construction for Units 3 and 4.

Response 7: The dates of construction in the permit reflect the information provided in Veolia's part 71 application. If the application is incorrect, EPA asks Veolia to make the appropriate changes in its application for a significant modification.

Comment 8: The commenter states that the permit incorrectly lists a carbon adsorption emission control that has been removed from the material processing area MP-2.

Response 8: EPA has changed section 1(B) of the permit to correct the error.

Comment 9: The commenter states that the permit incorrectly lists tank 390 as a waste storage tank, rather than a #2 fuel oil tank.

Response 9: EPA has changed section 1(B) of the permit to correct the error.

Comment 10: The commenter asks that language be added to the permit to allow Veolia to comply with any changes to the HWC MACT and take advantage of any extensions to the effective date that EPA may make upon publication in the Federal Register of changes to the HWC MACT.

Response 10: EPA does not expect any changes or extensions to the HWC MACT at this time; therefore, EPA has not made any changes to the permit. The language of the permit requires Veolia to comply with the HWC MACT in effect at the time of permit issuance.

Response 4: EPA has included the commenter's statement in the record via its comment letter.

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Response 10: EPA does not expect any changes or extensions to the HWC MACT at this time; therefore, EPA has not made any changes to the permit. The language of the permit requires Veolia to comply with the HWC MACT in effect at the time of permit issuance.

Comment 11: The commenter asks that the emission limits for sulfur dioxide and nitrogen oxide for Units 2, 3 and 4 reflect the potential to emit as defined in the permit application.

Response 11: The limits EPA included in the draft permit are the federally enforceable limits developed in construction permits 87100024 and 88010001, issued by the Illinois Environmental Protection Agency (Illinois EPA). Limitations and conditions established through the new source review permitting process remain effective until revised or rescinded under new source review authority. EPA has no authority to increase the sulfur dioxide and nitrogen oxide limits in this permitting action.

Comment 12: The commenter asks EPA to add the standards for dioxins and furans found at 40 C.F.R. §§ 63.1203(a)(1)(ii) and 63.1219(a)(1)(i)(A) and (B) to the permit.

Response 12: The standards in 40 C.F.R. §§ 63.1203(a)(1)(i) and 63.1219(a)(1)(i)(A), which apply generally to incinerators equipped with either a waste heat boiler or dry air pollution control system, are in the final permit. However, the standards in 40 C.F.R. §§ 63.1203(a)(1)(ii) and 63.1219(a)(1)(i)(B) apply to hazardous waste incinerators where the combustion gas temperature at the inlet to the initial PM control device is 400°F or lower, based on the average of the test run average temperatures. In Veolia's Notification of Compliance and permit application, Veolia stated that the 1-hour rolling average gas temperature at the inlet to the initial PM control device is 420°F, 420°F, and 435°F for Units 2, 3, and 4, respectively. Furthermore, Veolia has not developed operating parameter limits that will assure compliance with 40 C.F.R. §§ 63.1203(a)(1)(ii) and 63.1219(a)(1)(i)(B). Consequently, EPA has not included these standards in the final permit. If Veolia would like to utilize these emissions limits, Veolia must establish operating parameter limits and submit them to EPA with a request for a significant modification to the Title V permit. If EPA determines that the operating parameters assure compliance with the 0.40 nanogram per dry standard cubic meter, corrected to 7% oxygen, limit, EPA will revise the permit and establish monitoring and recordkeeping requirements necessary to assure compliance with the operating parameters and the emissions limit for dioxins and furans.

Comment 13: The commenter asks that EPA remove condition 2.1(B)(2) from the permit because Veolia is allowed to accept Potentially Infectious Medical Waste (PIMW), although it chooses not to do so.

Response 13: Pursuant to an e-mail dated August 28, 2008, Veolia has informed EPA that it will accept the prohibition on burning PIMW. If it decides it would like to begin to accept PIMW, Veolia will seek a modification to its Title V permit to incorporate applicable requirements associated with this change.

Comment 11: The commenter asks that the emission limits for sulfur dioxide and nitrogen oxide for Units 2, 3 and 4 reflect the potential to emit as defined in the permit application.

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Comment 14: The commenter asks that EPA include language in the permit that states that the operating parameters developed during testing in August of 2008 will immediately supersede the operating parameters in the table in 2.1(C)(2) until such time when the table is modified.

Response 14: Because incorporation of revised operating parameter limits into the Title V permit constitutes a significant modification, it is EPA's intention to provide the public with the opportunity to comment on the operating parameters Veolia develops as a result of the August 2008 testing. Therefore, EPA has not revised the permit to provide that the operating parameters that Veolia develops as a result of the August 2008 testing supersede the existing parameters in the table in section 2.1(C)(2) of the permit.

Comment 15: The commenter points out that EPA incorrectly required performance tests for total chlorine and ash and a demonstration for compliance with the performance specifications for continuous monitoring systems.

Response 15: Since Veolia has completed the testing required by 2.1(D)(9) of the draft permit, EPA has deleted this permit condition.

Comment 16: The commenter points out that section 2.1(D)(9), tables a, b, and c require the setting of PM control device parameters pursuant to 40 C.F.R. § 63.1209 (m)(1)(iv), which the commenter does not believe applies to fabric filters. The commenter further claims that Veolia is required by the "Request to Provide Information Pursuant to the Clean Air Act" dated June 5, 2008 from EPA to Veolia to establish PM control device parameters.

Response 16: The tables in section 2.1(D)(9) are the same tables found in requirement 4 of Appendix B to the "Request to Provide Information Pursuant to the Clean Air Act" dated June 5, 2008 from EPA to Veolia.

As promulgated on September 30, 1999, 40 C.F.R. § 63.1209(m)(1)(ii) set forth requirements to monitor appropriate operating parameters for fabric filters. 40 C.F.R. § 63.1207(f)(1)(xxiv) sets forth the related comprehensive performance test plan content requirements. On May 14, 2001, EPA removed and reserved 40 C.F.R. § 63.1209(m)(1)(ii) from the HWC MACT, but did not simultaneously amend 40 C.F.R. §§ 63.1207(f)(1)(xxiv) and 63.1209(m)(1)(iv) to remove their references to fabric filters.

EPA maintains that 40 C.F.R. § 63.1209(m)(1)(iv) does apply to fabric filters. After EPA removed and reserved the specific fabric filter and electrostatic precipitator parameters, the general requirement to establish a representative and reliable operating parameter took effect for fabric filter and electrostatic precipitators.

Comment 17: The commenter asks that 2.1(D)(16) be deleted because Veolia's Resource Conservation and Recovery Act (RCRA) Part B permit already requires waste analysis, other similar facilities' Title V permits do not have equivalent requirements, the

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Response 17: EPA has deleted section 2.1(D)(16) from the permit because section 2.1 (C)(2) does not define feedrate limits for mercury, low-volatile metals and semi-volatile metals due to the revised "Request to Provide Information Pursuant to the Clean Air Act" dated June 5, 2008 from EPA to Veolia rendering these sampling and analysis requirements irrelevant.

Comment 18: The commenter asks that section 2.1(E)(21) be deleted from the permit, asserting that the condition does not make sense because the table defined in section 2.1 (C)(2) does not define feedrate limits for mercury, low-volatile metals and semi-volatile metals due to the revised "Request to Provide Information Pursuant to the Clean Air Act" dated June 5, 2008 from EPA to Veolia.

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Comment 19: The commenter asks that section 2.4(E)(3)(b) and (c) be deleted from the permit because 40 C.F.R. § 60.116b(g) exempts vessels having a closed vent system/control device from these record keeping requirements as long as the closed vent system/control device meet the specifications of 40 C.F.R. § 60.112b.

Response 19: The recordkeeping requirements in 2.4(E)(3)(b) and (c) are required for periodic monitoring purposes under part 71. 40 C.F.R. § 71.6(c)(1) provides that all part 71 permits contain, among other things, testing, monitoring, reporting, and recordkeeping requirements sufficient to assure compliance with the terms and conditions of the permit. As the part 71 permitting authority, EPA has determined that the monitoring and recordkeeping requirements of section 2.4(E)(3)(b) and (c) are necessary to verify that the subject storage tanks at the facility are in compliance with the applicable emission limitations. The new source performance standard at 40 C.F.R. § 60.112b cannot exempt Veolia from the requirements of part 71.

Comment 20: The commenter asks that sections 2.5(A)(2)(a)(ii) and 2.5(D)(7)(b) of the permit be reworded to allow for natural draft openings. The commenter states that negative pressure is required within the building to direct emissions to the carbon system, and natural draft openings are essential to maintain the physical integrity of the building.

Response 20: EPA agrees with the safety concern raised by the commenter. EPA has changed condition 2.5(A)(2)(a) the permit to require Veolia to comply with 40 C.F.R.

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Response 20: EPA agrees with the safety concern raised by the commenter. EPA has changed condition 2.5(A)(2)(a) the permit to require Veolia to comply with 40 C.F.R.

§ 61.343(a)(2) as an alternative provided for in the National Emission Standard For Benzene Waste Operations.

Comment 21: The commenter argues that the 564 gallon gasoline storage tank is an insignificant source under 35 IAC 201.210(a)(11) and 201.211(a). The commenter asks that, if EPA disagrees that the gasoline storage tank is an insignificant source, EPA will replace the language in the draft permit with language from the Title V permit which Illinois EPA issued to Olin Corporation. The commenter asks that, at a minimum, the gasoline monitoring, testing, and recordkeeping requirements for the Reid Vapor Pressure demonstration be eliminated, and records/documentation from the supplier be allowed as a substitute means of documenting compliance with vapor pressure requirements.

Response 21: In order for an emissions unit to be considered a insignificant emissions unit under part 71, it must meet the requirements of 40 C.F.R. § 71.5(c)(11). The commenter has not made a demonstration that the 564 gallon gasoline storage tank meets those requirements.

EPA reviewed the permit language from the Title V permit Illinois EPA issued to Olin Corporation and determined that it does not meet the requirements of 40 C.F.R. § 71.6(a)(3). In particular, the Title V permit Illinois EPA issued to Olin Corporation does not contain sufficient monitoring to assure compliance with the requirements of 35 IAC 219, to which Veolia is subject. EPA believes the monitoring, recordkeeping and reporting requirements in Veolia's draft permit meet the requirements of 40 C.F.R. § 71.6(a)(3), as explained in section 3(C) of the Statement of Basis.

In consideration of the commenter's request that the gasoline monitoring, testing and record keeping requirements for Reid Vapor Pressure demonstration be eliminated and records/documentation from the supplier be allowed as a substitute means of documenting compliance with vapor pressure requirements, EPA believes that the permit language, as written, allows Veolia to use supplier provided information provided that the supplier uses the approved testing methods to determine the Reid Vapor Pressure.

Comment 22: The commenter argues that Veolia's natural gas fired boiler should not be subject to more stringent requirements than what would have been required of it under 40 C.F.R. part 63, subpart DDDDD prior to its vacatur in 2007. Specifically, the commenter claims that the emission rate of 200 parts per million (ppm) carbon monoxide (CO) is more stringent than the most restrictive limits in subpart DDDDD, and that there is no basis for the 200 ppm limit. The commenter concludes that the limitations in the construction permit found at section 2.7(A)(2) of the permit should be the only limitation on CO. The commenter also notes that the Title V permit which Illinois EPA issued to Olin Corporation does not require Method 9 opacity testing, annual CO performance testing, stack testing for oxygen and carbon dioxide, or Method 4 moisture content testing of stack gases. The commenter further believes that maintaining documentation of fuel usage should be the only requirement for the gas-fired boiler.

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EPA reviewed the permit language from the Title V permit Illinois EPA issued to Olin Corporation and determined that it does not meet the requirements of 40 C.F.R. § 71.6(a)(3). In particular, the Title V permit Illinois EPA issued to Olin Corporation does not contain sufficient monitoring to assure compliance with the requirements of 35 IAC 219, to which Veolia is subject. EPA believes the monitoring, recordkeeping and reporting requirements in Veolia's draft permit meet the requirements of 40 C.F.R. § 71.6(a)(3), as explained in section 3(C) of the Statement of Basis.

In consideration of the commenter's request that the gasoline monitoring, testing and record keeping requirements for Reid Vapor Pressure demonstration be eliminated and records/documentation from the supplier be allowed as a substitute means of documenting compliance with vapor pressure requirements, EPA believes that the permit language, as written, allows Veolia to use supplier provided information provided that the supplier uses the approved testing methods to determine the Reid Vapor Pressure.

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Response 22: Since 40 C.F.R. part 63, subpart DDDDD was vacated, the Clean Air Act (CAA) requires the permitting authority to issue a Title V permit with limitations on hazardous air pollutant (HAP) emissions that it determines, on a case-by-case basis, meets the "MACT floor" pursuant to section 112(j) of the CAA. EPA, as the permitting authority, completed such an analysis and included its reasoning in section 3(E) of the Statement of Basis. Based on this analysis and the background information provided in the docket, EPA believes that 100 ppm CO is an appropriate limit under section 112(j) of the CAA. We also explain why this limit is more stringent that what was originally required by the now vacated 40 C.F.R. part 63, subpart DDDDD. The commenter did not provide any additional information to demonstrate that EPA's analysis was incorrect or inconsistent with the requirements of the CAA; therefore, EPA's 112(j) determination for Veolia's natural gas fired boiler will remain unchanged.

In response to the commenter's concern with the testing requirements, EPA included these tests as required by 40 C.F.R. § 63.52(f) and Title V. EPA's reasoning for these requirements are provided in section 3(E) of the Statement of Basis. The commenter did not provide any additional information to demonstrate that EPA's testing requirements are inconsistent with the requirements of the CAA; therefore, EPA's testing requirements for Veolia's natural gas fired boiler will remain unchanged.

EPA does note that the commenter incorrectly referred to the limit as 200 ppm where EPA is requiring 100 ppm based on our analysis. Veolia is subject to a 200 ppm limit under the federally approved Illinois State Implementation Plan (SIP). Therefore, Veolia is subject to the 200 ppm limit irrespective of EPA's 112(j) determination for Veolia's natural gas fired boiler.

Comment 23: The commenter states that the reference in section 2.8(A)(1)(a) to 40 C.F.R. § 61.05 is not valid. The commenter also asks that EPA remove the reference to 40 C.F.R. § 61.135 from section 2.8(D)(2)(c).

Response 23: The reference to 40 C.F.R. § 61.05 in section 2.8(C)(1)(a) of the permit comes directly from the applicable requirement found in 40 C.F.R. § 61.242-1. 40 C.F.R. § 61.05, among other things, prohibits operation of any subject new or existing stationary source in violation of the any applicable standards. Since the commenter did not provide any reason why the requirements of 40 C.F.R. § 61.05 do not apply to the facility, EPA has not removed the reference from the permit. Similarly, the reference to 40 C.F.R. § 61.135 in section 2.8 of the permit is part of an applicable requirement at 40 C.F.R. § 61.246. However, EPA agrees that Veolia is not subject to National Emission Standard for Benzene Emissions from Coke By-Product Recovery Plants, and will, therefore, remove these references from section 2.8(D)(1)(b) and (2)(c) of the permit.

Comment 24: The commenter states that all of the 550-gallon storage tanks should be considered insignificant activities as defined by 35 IAC 201.210(a)(11) and 201.211 (a). The commenter further states that drum sampling should be added to the list of insignificant activities.

Response 22: Since 40 C.F.R. part 63, subpart DDDDD was vacated, the Clean Air Act (CAA) requires the permitting authority to issue a Title V permit with limitations on hazardous air pollutant (HAP) emissions that it determines, on a case-by-case basis, meets the "MACT floor" pursuant to section 112(j) of the CAA. EPA, as the permitting authority, completed such an analysis and included its reasoning in section 3(E) of the Statement of Basis. Based on this analysis and the background information provided in the docket, EPA believes that 100 ppm CO is an appropriate limit under section 112(j) of the CAA. We also explain why this limit is more stringent that what was originally required by the now vacated 40 C.F.R. part 63, subpart DDDDD. The commenter did not provide any additional information to demonstrate that EPA's analysis was incorrect or inconsistent with the requirements of the CAA; therefore, EPA's 112(j) determination for Veolia's natural gas fired boiler will remain unchanged.

In response to the commenter's concern with the testing requirements, EPA included these tests as required by 40 C.F.R. § 63.52(f) and Title V. EPA's reasoning for these requirements are provided in section 3(E) of the Statement of Basis. The commenter did not provide any additional information to demonstrate that EPA's testing requirements are inconsistent with the requirements of the CAA; therefore, EPA's testing requirements for Veolia's natural gas fired boiler will remain unchanged.

EPA does note that the commenter incorrectly referred to the limit as 200 ppm where EPA is requiring 100 ppm based on our analysis. Veolia is subject to a 200 ppm limit under the federally approved Illinois State Implementation Plan (SIP). Therefore, Veolia is subject to the 200 ppm limit irrespective of EPA's 112(j) determination for Veolia's natural gas fired boiler.

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Response 24: In order for an emissions unit to be considered a insignificant emissions unit under 40 C.F.R. part 71, it must meet the requirements of 40 C.F.R. § 71.5(c)(11). The commenter has not made such a demonstration. Veolia should include the request to add the 550-gallon storage tanks to the list of insignificant activities as part of its significant modification application, and include with the request, information to show that the tanks fall under the 40 C.F.R. § 71.5(c)(11) definition of insignificant emissions.

Comment 25: The commenter states that section 3.0(D)(10) and (11)(B) should be eliminated from the permit because 3.0(D)(8) generally requires compliance with 40 C.F.R. part 61, subpart FF "National Emission Standard for Benzene Waste Operations," to which the permit already refers.

Response 25: EPA understands that section 3.0(D)(10) and (11)(B) contains some of the requirements of Subpart FF, however, we believe it is important to specify the annual benzene waste quantity determination requirements for clarity in the permit. Therefore, we have not removed section 3.0(D)(10) and (11)(B) from the permit.

Comment 26: The commenter asks EPA to renumber section 3.0 (D)(12)(B)(2)(c).

Response 26: EPA concurs that the renumbering suggested by the commenter is consistent with 40 C.F.R. § 61.357, and has changed the permit.

Comment 27: Citing the discussion in the Statement of Basis of the September 27, 2006, Notice of Violation and Finding of Violation (NOV/FOV), the commenters state that Veolia is not in compliance with all the applicable requirements. The commenters further argue that EPA does not have any discretion when it comes to including a compliance schedule in Veolia's part 71 permit. The commenters believe the draft permit does not meet the compliance schedule requirements of 40 C.F.R. § 71.6(c)(3) and (4).

Response 27: EPA has previously stated its view, in declining to object to two Title V permits issued to Georgia Power Company, that the issuance of an NOV/FOV alone is not sufficient evidence to make the requisite "demonstration" under section 505(b)(2) of the CAA that a permit lacking a compliance schedule is in noncompliance with the CAA. (See, generally, In the Matter of Georgia Power Company, Bowen Steam-Electric Generating Plant, et al, Final Order, dated January 8, 2007, at 5-9.) This approach and order was recently upheld by the United States Court of Appeals for the Eleventh Circuit in Sierra Club v. EPA, No. 07-11537 (Sept. 2, 2008). Consistent with this approach, EPA believes that the current permit record (including the NOV/FOV) is insufficient to necessitate a compliance schedule at this time. Further, the United States Court of Appeals for the Seventh Circuit found in Citizens Against Ruining the Environment (CARE), et al. v. EPA, Nos. 07-3197, 07-3198, and 07-3199 (7th Cir. July 28, 2008), that the CAA allows EPA reasonable discretion to determine that a petition to object to a Title V permit failed to demonstrate noncompliance and to refer the matter to the enforcement process. Although that case addresses a commenter's petition asking EPA to object to a Title V permit issued by a state permitting authority, the Court explicitly stated that the

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CAA did not require EPA to "fully investigate and resolve all allegations in the permitting context." Id. at 14.

The commenters incorporated into their current comments original written comments[1] and oral comments made on September 11, 2003 and at the 2003 public hearing, respectively. However, the commenters did not provide in any of these comments sufficient information for EPA to determine whether Veolia has violated the New Source Review (NSR) provisions of the CAA. Therefore, EPA has not included a compliance schedule in the permit at this time. Instead, EPA will allow the issues of NSR compliance raised in the NOV/FOV to be fully investigated and resolved in the enforcement process, after which EPA will reopen the Title V permit to incorporate a compliance schedule, if necessary.

In the interim, EPA has included in section 4.0(U) of the permit language that states that the permit shield shall not apply to, and compliance with the permit shall not be deemed to be compliance with, those applicable requirements relevant to the NOV/FOV, as well as parts C and D of Title I of the CAA, or any requirements of the Illinois SIP, or federal or state regulations that govern the permitting of major modifications to sources of air emissions.

Comment 28: The commenters state that the changes EPA made between the February 22, 2008, Request for Information and the June 5, 2008, Request for Information, particularly the extension of time to complete the tests and limiting the testing to metals, are inconsistent with part 71 and that EPA has no legal grounds to allow Veolia to further delay its obligations. The commenters believe that EPA should deny the permit if it does not have sufficient information necessary to issue a permit that assures compliance.

Response 28: In processing Veolia's application, EPA determined that it needs additional testing information to ensure that the operating parameter limits for mercury, semi-volatile metals and low-volatile metals assure compliance with the metals emissions limits contained in the HWC MACT. EPA has required Veolia to undergo this testing as expeditiously as possible while the permit process is ongoing. The draft permit does contain a compliance schedule in section 2.1(D)(9) and (E)(2)(b) that is consistent with the requirements in the Requests for Information. EPA believes that completing the testing to determine the operating parameter limits as required by this compliance schedule will assure that Veolia will be in compliance with the HWC MACT requirements of 40 C.F.R. § 63.1209. EPA believes this approach is consistent with the requirements of Title V and its implementing regulations in part 71. EPA notes that the permit shield does not extend to these applicable requirements.

[1] In the Order which partially denied and partially granted the Petition for Objection In the Matter of Onyx Environmental Services, EPA granted the issue addressing the question of the need for a compliance schedule in the permit the Illinois EPA proposed to issue to Onyx Environmental Services based upon the fact that Illinois EPA had not responded to the petitioners' comments, rather than on substantive grounds.

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Comment 29: The commenters state that it is unclear how the permit would be sufficient to bring the facility into compliance through measurable and enforceable steps, pointing to the American Bottom Conservancy's 2003 Title V comment letter to Illinois EPA, which included a list of violations.

Response 29: EPA believes the permit will assure compliance with all applicable requirements. The draft permit contains all the requirements applicable to Veolia including the HWC MACT. The permit also contains a compliance schedule as referenced in Response 28 for obtaining the necessary information to establish operating parameter limits for metals. EPA is addressing other allegations of noncompliance through the enforcement process, and, as discussed in Response 27, will reopen the permit to include a compliance schedule as appropriate. EPA notes that the permit shield does not apply to those applicable requirements for which a compliance schedule has been added or for which an NOV/FOV has been issued.

Comment 30: The commenters state that it is unclear whether Veolia submitted the required compliance plan and schedule of compliance with its application, as required under part 71.

Response 30: The application did not include a compliance plan or schedule. Veolia certified compliance, therefore, Veolia did not believe it needed a compliance plan or schedule at the time the application was submitted in May of 2007. As discussed above, in processing the application, EPA determined that there was insufficient information to ensure that the operating parameter limits Veolia proposed in its application would assure compliance with the emissions limitations for mercury, low-volatile metals and semi-volatile metals. Therefore, EPA issued an information request, which we subsequently revised, requiring Veolia to perform tests to generate the data necessary to establish operating parameter limits.

Comment 31: The commenters are concerned that Veolia has burned waste from Washington University medical school and a hospital in Granite City based on testimony from the public hearing. The commenters believe that Veolia is not allowed to burn medical waste.

Response 31: Veolia has clarified in it comments on this permit action that it has a permit from the State of Illinois that allows it to burn medical waste; however, Veolia has choosen not to accept medical waste. (See Comment 4, above.) The final permit prohibits Veolia from burning medical waste.

Comment 32: The commenters note that the permit contains emission limits for storage facilities for hazardous waste, including volatile organic compounds and particulate matter. At a site visit in 2006, the commenters noticed that barrels and other containers are stored in the open, covered only by a roof. The commenters are concerned about this practice, particularly because there are residential areas within three miles of Veolia

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whose and the population comprises minorities living below the poverty line. Nearly half are children (under 17) or seniors (65 and older), populations that are most vulnerable to air pollution.

Response 32: The permit contains all applicable requirements that address storage at this facility. As noted below (in response to comment 39), Title V generally does not impose substantive emission control requirements, but rather requires all applicable requirements to be included in the Title V permit

Comment 33: The commenters ask that its 2004 Petition Requesting that the Administrator Object to Issuance of the Proposed Title V Operating Permit for the Onyx Toxic Waste Incinerator and the entire record of Docket ID No. EPA-R05-OAR-2008-0235 plus the entire record from Illinois EPA on the original Title V permit be incorporated into these comments and this record.

Response 33: All of the above mentioned documents have been included in the docket to the extent that they are included as attachments to the commenters' letter. EPA and Illinois EPA have already responded to the Petition and comments on the permit. See February 1, 2006 Petition Response at http://www.epa.gov/Region7/programs/artd/air/title5/petitiondb/petitions/onyx_decision2004.pdf and its August 9, 2006, amendment at http://www.epa.gov/Region7/programs/artd/air/title5/petitiondb/petitions/onyx_decision2004_amended.pdf .

Comment 34: In its 2004 Petition to Object, the Sierra Club and American Bottom Conservancy argued that NSR violations at the Veolia facility must be addressed. EPA's 2006 response ordered Illinois EPA to respond to the Sierra Club and American Bottom Conservancy's comments. The commenters ask that EPA address the NSR violations in its permit.

Response 34: In responding to the 2004 Petition, EPA concluded that Illinois EPA had failed to respond to significant comments on the issue, and directed Illinois EPA to respond to those comments as the commenters point out. However, as noted in Response 27, above, the commenters did not provide either in their July 17, 2008 comments or in any of the comments incorporated by reference sufficient information for EPA to determine whether Veolia has violated the NSR provisions of the CAA. Therefore, EPA has not included a compliance schedule in the permit at this time. Instead, EPA will allow the issues of NSR compliance raised by the commenter and in the NOV/FOV to be investigated and resolved in the enforcement process, after which EPA will reopen the Title V permit to incorporate a compliance schedule, if necessary. In the interim, EPA has included in section 4.0(U) of the permit language that states that the permit shield shall not apply to, and compliance with the permit shall not be deemed to be compliance with, parts C and D of Title I of the CAA, or any requirements of the Illinois SIP, or federal or state regulations that govern the permitting of major modifications to sources of air emissions.

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Comment 35: The commenters ask that EPA "respond to our comments regarding the Illinois SIP," referring EPA to "that part of the Administrator's remand order (Ex. 11)."

Response 35: The commenters' request is very vague, but EPA understands it to refer to pages 5 and 6 of the February 1, 2006 Order, which responds to the following statement in the February 18, 2004, petition from the Sierra Club and American Bottom Conservancy:

> "In Illinois' SIP is a provision stating that "no person shall cause or threaten or allow the discharge or emission of any contaminant into the environment in any State so as, either alone or in combination with other sources, to cause or tend to cause air pollution in Illinois." 35 Ill. Admin. Code § 201.141. The term "air pollution" is further defined to mean "the presence in the atmosphere of one or more air contaminants in sufficient quantities and of such characteristics and duration as to be injurious to human, plant, or animal life, to health, or to property, or to unreasonably interfere with the enjoyment of life or property." 35 Ill. Admin. Code § 201.102. As described elsewhere in this petition, Onyx is seeking permission to discharge such contaminants as mercury, lead, and dioxin into the environment at levels that are injurious to human health and the environment."

EPA agrees that 35 Ill. Admin. Code § 201.141 is incorporated into the Illinois SIP and is an applicable requirement for the facility. Accordingly, EPA has included a provision in the permit requiring compliance with this provision. EPA notes, consistent with the comment, that, as this provision is found in the Illinois Administrative Code, its terms should be interpreted in light of the relevant definitions and provisions of those regulations. Both the Illinois SIP and federal regulations are designed to protect public health and welfare (including human health, plant and animal life, and property). EPA believes that the terms and conditions of the permit are sufficient to assure compliance with 35 Ill. Admin. Code § 201.141.

Comment 36: The commenters comment that the online docket was disorganized and the documents within were not well labeled, thus defeating the intention of giving the public access to the extensive record. The commenters further state that EPA did not follow-up with the suggestions the commenters made to enhance public accessibility.

Response 36: EPA understands that there are limitations to the federal government's online docket system and that some users may find it difficult to use. We did our best, given the timeframe to provide the entire docket in the most accessible manner available to us.

In a June 16, 2008, e-mail to Genevieve Damico of EPA, Kathy Andria asked EPA to:
1) Prepare a plain-language public notice and fact sheets and have them distributed in the community;
2) More clearly identify the documents on your website pertaining to the record and prepare an index;

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3) Prepare a common-language, user-friendly project summary;
4) Prepare CDs of the indexed record and documents and distribute to local libraries in East St. Louis, Cahokia, Belleville and St. Louis and to requesting organizations; and
5) Enhance outreach in any other way that has proven successful in other EJ communities.

Ms. Damico immediately contacted Ms. Andria to discuss options that could be implemented during the 30 days left in the comment period to enable the community to be more involved. EPA prepared a plain-language fact sheet, which was available online prior to the public hearing and in hard copy at the public hearing on July 8, 2008. The online docket system, "regulations.gov," lists the contents of the docket as would an index. EPA also had made the Statement of Basis available to the public at the time the permit was issued for public comment. EPA had written the Statement of Basis, which is equivalent to Illinois EPA's project summary, in a user-friendly way. Ms Andria had requested that EPA place copies of the docket in local libraries and public offices. EPA prepared a copy of the docket and an index of the documents on the CD, and, within two days of receiving the list of locations from Ms. Andria, mailed it to all forty libraries and public offices Ms. Andria suggested. Ms. Andria did not have any other specific requests to enhance the public comment process. Until the July 8, 2008 public hearing, Ms. Andria had not suggested that that she felt that EPA was not meeting the requests made in her June 16, 2008, e-mail.

Comment 37: The commenters state that Veolia is in significant noncompliance, is a high priority violator, and has been out of compliance for the last nine quarters on its CAA permit. The commenters cite the ECHO report as evidence that the facility has a long history of being out of compliance with its RCRA and water permits, and to the Statement of Basis for violations of the CAA. The commenters assert that Veolia's current ownership refused to sign the Notice of Intent to Comply.

Response 37: EPA cannot address alleged violations of Veolia's RCRA and water permits in this permit action. EPA has addressed alleged violations of the CAA in Response 27.

Comment 38: The commenters state that Veolia is located in the greater St. Louis region, which is nonattainment for both ozone and PM 2.5. The commenters further claim that, at the July 8, 2008 public hearing, Veolia touted that it had lower emissions reported for the 2006 Toxics Release Inventory, but when the commenters visited the facility in 2006, one of the units was shut down and undergoing re-construction. The commenters state that they do not have information as to how long the unit was not in operation.

Response 38: EPA notes the commenters' statement. However, the comments do not suggest any flaw in the permit that must be addressed as a result of this statement.

Comment 39: The commenters assert that this permit action should be given special consideration under environmental justice (EJ) guidlines. The commenters point to

3) Prepare a common-language, user-friendly project summary;
4) Prepare CDs of the indexed record and documents and distribute to local libraries in East St. Louis, Cahokia, Belleville and St. Louis and to requesting organizations; and
5) Enhance outreach in any other way that has proven successful in other EJ communities.

Ms. Damico immediately contacted Ms. Andria to discuss options that could be implemented during the 30 days left in the comment period to enable the community to be more involved. EPA prepared a plain-language fact sheet, which was available online prior to the public hearing and in hard copy at the public hearing on July 8, 2008. The online docket system, "regulations.gov," lists the contents of the docket as would an index. EPA also had made the Statement of Basis available to the public at the time the permit was issued for public comment. EPA had written the Statement of Basis, which is equivalent to Illinois EPA's project summary, in a user-friendly way. Ms Andria had requested that EPA place copies of the docket in local libraries and public offices. EPA prepared a copy of the docket and an index of the documents on the CD, and, within two days of receiving the list of locations from Ms. Andria, mailed it to all forty libraries and public offices Ms. Andria suggested. Ms. Andria did not have any other specific requests to enhance the public comment process. Until the July 8, 2008 public hearing, Ms. Andria had not suggested that that she felt that EPA was not meeting the requests made in her June 16, 2008, e-mail.

Comment 37: The commenters state that Veolia is in significant noncompliance, is a high priority violator, and has been out of compliance for the last nine quarters on its CAA permit. The commenters cite the ECHO report as evidence that the facility has a long history of being out of compliance with its RCRA and water permits, and to the Statement of Basis for violations of the CAA. The commenters assert that Veolia's current ownership refused to sign the Notice of Intent to Comply.

Response 37: EPA cannot address alleged violations of Veolia's RCRA and water permits in this permit action. EPA has addressed alleged violations of the CAA in Response 27.

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reports that the U.S. Army Corps of Engineers has declared that the existing levees are not structurally sound and cannot be certified as protecting the area from a flood. FEMA and the Corps are in the process of decertifying the levees. The commenters report that FEMA has sent all the American Bottom floodplain communities, including Sauget, new maps showing that they are now unprotected. Veolia stores hazardous waste waiting to be incinerated. Commenters suggest that, should a levee be compromised due to an earthquake, that hazardous waste would be mixed with floodwaters and carried to adjacent communities and their residents. The commenters recognize that this information is not directly relevant to Title V, however, they ask EPA to consider this information relevant for environmental justice purposes.

Response 39: Title V does not provide EPA the authority to consider or act upon these factors in its decision to issue or deny this permit. Title V generally does not impose substantive emission control requirements, but rather requires all applicable requirements to be included in the Title V permit.

Comment 40: The commenters believes that the public outreach efforts in this permitting process where unacceptable and fell short of normal permitting public participation requirements, especially in an environmental justice community. There was no media outreach. The commenters claim that not one newspaper article appeared locally notifying residents of the public hearing or a pending permit or the potential impacts from the permit. There was no enhanced outreach to communities or local officials (except for our request to provide an indexed record on CDs to local libraries and clerks. While the CDs were mailed, there was no index or explanation.) There was no information provided in the public notice as to which of the many buildings on the East St. Louis college campus would host the public hearing or were there any signs on campus directing those coming to attend the public hearing where to go.

The comments compared the attendance at Illinois EPA's 2003 public hearing to that at EPA's more recent public hearing as evidence that EPA efforts to involve the community were lacking. At Illinois EPA's hearing more residents attended than EPA's where two people spoke in opposition to the permit.

Response 40: In addition to the two prominent newspaper notices in the Belleville-News Democrat and the East St. Louis Monitor, EPA took steps to notify the public of this action through two press releases on June 5, 2008 and July 7, 2008. It is true that these notices only included the location of the East St. Louis Higher Education Center campus where the public hearing was to be held, rather than a specific room number.

EPA obtained the list of attendees from Illinois EPA of the 2003 public hearing Illinois EPA hosted for its original Title V permit for Veolia (a.k.a Onyx Environmental Services) and the more recent public hearing Illinois EPA held for the Title V permit for Veolia's neighbor, Solutia and sent 40 letters directly to all of the attendees. The media covered the public hearing, following which EPA received additional comments from other residents.

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EPA believes its efforts to inform the community of the permit action not only met the requirements of 40 C.F.R. part 71, but were implemented with the knowledge that the Sauget area is classified as an EJ area.

Comment 41: At the public hearing, several speakers spoke in favor of EPA issuing the permit to Veolia. These are summarized comments from speakers who spoke favorably specifically about the permit action, Veolia's operations, or air quality issues in the East St. Louis area. The transcript of the public hearing and the full text of the comments are found in the docket for this action. The full text of all of the comments was considered before issuing the final permit.

1) Veolia provides the Washington University School of Medicine service in disposing of its common materials and anything unusual that may be a result of its research. Veolia's knowledge and expertise is invaluable to the university given the many array of byproducts that generated at the university. Having Veolia's incineration complex located here in the St. Louis/Metro area allows the university, many other industries and institutions to reduce our carbon footprint by minimizing fuel for transport.
2) A commenter has toured their facilities on several occasions and has an opportunity to observe the operation of this plant on a daily basis. It's always neat, clean, well-maintained, odor free, and there are no visible signs of air emissions. The facility is secure.
3) Veolia is in compliance with the American Bottoms Treatment Plant pretreatment program over the years. The American Bottoms Treatment Plant staff works with Veolia staff and considers them well-qualified, very qualified and committed to operating in compliance with all environmental regulations and statutes.
4) A commenter believes that employees and contractors of the American Bottoms Treatment Plant are not exposed to any risk due to the Veolia's operation.
5) Veolia has made a significant commitment to understand the performance of its units at Sauget, and the commenter is fully confident that the test results show its compliance with the applicable HWC MACT standards. Finally, in the commenter's experience having worked with many different facilities over the years, the Sauget facility represents one of the top performers in the industry.
6) The commenter reviewed the permit to confirm that all the state and federal requirements have been met. The application and draft permit include limits for the three incinerators for such things as visible emissions, sulfur dioxide, carbon monoxide, organic emissions, nitrogen oxide, other hazardous pollutions, and hydrogen chloride. Veolia has to show that the incinerator can destroy all the waste they put into it with a very high degree of destruction. Veolia has operating permit limits developed based on stack tests to demonstrate how Veolia complies with all those particular limits. The draft permit for Veolia contains the operating constraints and the required emission controls to achieve the minimization of emissions from the hazardous waste combustors and all associated activities. The draft permit contains provisions to demonstrate and document Veolia's compliance with the permit limits. It is the commenter's belief the EPA has done a thorough job in writing this permit. It meets both the intent and requirements of

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the MACT standards, the Title V permitting requirements, and the CAA outlined by Congress in 1990.

7) EPA performed a Risk Screening that included a number of simplifying assumptions for the Veolia incineration facility dated March 22, 2004. Based on the results of the risk screening, EPA recommended annual emission limits for mercury, cadmium and chromium that resulted in certain short-term emission limits that were more stringent than the HWC MACT standards. The HWC MACT standards for the other metals were determined protective of human health and environment based on those results. In April 2004, Franklin Engineering undertook the project to conduct a more detailed site specific risk assessment. The result of the risk assessment is expressed in incremental carcinogenic and non-carcinogenic effects from incinerator emissions on individuals that live within the risk-assessment area. The risk-assessment protocol accounts for inhalation pathways, as well as other pathways, including the potential food-chain routes of exposure. The benchmark for evaluating the carcinogenic effects recommended by EPA is the individual risk associated with exposure to potential carcinogens released from a single facility should not exceed 1 in 100,000. Conduct of the Veolia risk assessment resulted in incremental cancer risk less than the benchmark of 1 in 100,000. Additionally, there's a benchmark for evaluating the non-carcinogenic health effects, and those are a hazard quotient of 1.0. However, for the purposes of evaluating non-carcinogenic health effects from a single incineration facility, EPA suggested that the calculated hazard quotient should be less then 0.25. The results presented in the October 2005 Risk Assessment Report indicate that for each combination of constituent and pathway evaluated the hazard quotient was less than the benchmark of 0.25. Therefore, emissions evaluated are not likely to impose adverse effects related to non-carcinogenic hazard. Therefore, the HWC MACT standards proposed in the Title V permit should be protective of human health and environment.
8) The commenter agreed that the approach that's used in the risk assessment for Veolia is based on EPA's guidance and methods that are currently being used across the industry for permitting and the guidance and modeling approaches as used across the nation and different information also that's available by EPA for risk assessment. The commenter concludes that the risk assessment is conservative in nature given the number of conservative assumptions that were used. The result of the risk-assessment study that the commenter reviewed for Veolia documents that any potential cancer or non-cancer risk to human health from facility emissions is lower than the acceptable threshold established by EPA. The hazard quotient for non-cancer effect and then any carcinogenic effects is one in a hundred thousand, and the facility is below those benchmarks. The commenter believes that Veolia's risk assessment is both representative of the approaches used across the industry, and that the MACT emission limits that are in the Title V permit are expected to be protective of human health.
9) Veolia's operation of their incinerator and reclamation department has been beneficial to Madison County and its residents by disposing of waste such as, unused medical waste, latex/oil based paints, and other household hazardous materials. Without the much-needed incinerator, only one of three in the country, residents and departments of Madison County would inevitably be storing tons of waste in their homes and warehouses, possibly in violation of federal, state and

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local solid-waste ordinances. Veolia disposed 300 pounds of unused medical and fuel blended/reclaimed latex and oil-based paints from the public, averaging almost 20,000 gallons a year. The commenter believes the operations of Veolia are secure, efficient, and well-maintained. All aspects of safety are top priority for employees, as well as the surrounding areas and environment.

10) A brief examination of the 2006 TRI reports for the Metro-East area will show that Veolia's incinerator emissions are several orders of magnitude below that of other industries. Veolia's emissions are less than one tenth of one percent of all the TRI emissions from industry in Madison County and St. Clair County. Veolia's lead and particulate emissions are below the EPA MACT standards level. Veolia's risk assessment was performed using worst-case assumptions for the actual emissions from our stacks. The commenter disagrees with EPA's allegations of non-compliance as discussed in the statement of basis.

Response 41: The commenter's additional information has been included in the record via its comment letter. As for any dispute over Veolia's compliance status, EPA is in the midst of the appropriate enforcement process which does involve the opportunity for Veolia to provide EPA with additional information.

Comment 42: A commenter stated at the July 8, 2008, public hearing that Veolia's history does not suggest that it needs to remain in operation as it has been operating. There are a number of facilities in the area that are adding to the burden that we breathe, and so cumulative impact is something that needs to be considered in communities that are low income and minority communities that have already more than their share of environmental hazards that they have to deal with. Veolia's particulate matter emissions are of particular concern for those of us in the non-attainment area since research continues to show that fine particulate matter leads to heart disease and a number of health problems and causes numerous deaths across the region. The commenter is also concerned about Veolia's lead emissions because there is no safe level of exposure to lead. Considering Veolia's lead emissions and the other emissions in the area, the commenter suggests that we should be cautious and careful about whether a facility that has an operating history like this one does deserves another permit. And if we decide to permit Veolia, we need to make sure that it has the compliance schedules in it to maintain compliance, monitoring in it to allow us to make sure Veolia is operating the way that it should and the enforcement from Illinois EPA that makes sure that Veolia actually delivers on the promises that are made in that permit.

Response 42: Title V of the CAA, the authority under which this permit is issued, does not provide EPA the authority to consider cumulative impacts and levels of exposure to lead. At this time no requirements applicable to Veolia regulating fine particulate matter specifically have been developed, therefore, no requirements can be added to the permit.

The commenter requests that EPA include compliance schedules and monitoring to assure compliance. As explained in Response 26, EPA is currently going through the process to address our allegations of non-compliance. Once that process is complete, EPA will include compliance schedules as appropriate. EPA believes this permit does

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Comment 43: EPA has not properly informed the citizenry of the permitting action. The public notice put in two newspapers was all the notice that was sent, other than the letters that they sent to people from some meeting years ago. The commenter identified this permitting action as an environmental-justice issue. When there is an environmental-justice issue identified, it is incumbent upon EPA or Illinois EPA to have enhanced outreach. The commenter has asked EPA for a written record to be put in libraries and for a list of the documents. EPA denied the commenter's request but they sent out CDs to a list of libraries, suggested villages, and city clerks the commenter provided EPA. The commenter comments that EPA did not send out something to tell people about this public hearing, enhance outreach, and send press releases. EPA sent a media advisory dated the day of the public hearing saying the public hearing was the next day. The commenter states that Veolia is out of compliance based on EPA's finding of violation and the filings of the Attorney General's Office.

Response 43: EPA refers to Responses 37, 33, and 26.

Comment 44: The commenter requests that EPA deny the permit because:
1) Veolia has a history of illegal releases and violations including emission leaks, hazardous air pollutants, benzene, compliance testing, mercury limits and arsenic emission standards. To date the facility has not been able to demonstrate that it can operate in compliance. As mentioned in the DRAFT CAAPP-IEPA Title V permit, it "exceeded its existing permit operating parameter limits roughly 25% of the time online." The DRAFT CAAPP-IEPA further noted that there was "significant noncompliance with the existing permits and the limits Veolia IS established in their Notification of Compliance."

2) The East St. Louis area has a mean family income well below the national average, extreme levels of poverty, a high unemployment rate, and a 98% minority population. It already bares a disproportionate amount of adverse health and environmental effects due to the industrial and commercial entities in the surrounding area– making this a true environmental justice issue.

3) The EPA website provides a wide range of information on the health consequences of a variety of pollutants including arsenic, lead and mercury. Since this facility is located in an urban area and a flood plain, air and water quality is of grave concern. Given that children are more at risk of health problems due to such exposures, EPA should carefully consider the adverse impacts to the surrounding community.

Response 44: EPA refers to Responses 26, 36, and 39.

Comment 45: The commenter encourages EPA to issue the permit to Veolia because without this facility waste will be disposed of illegally in a reckless manner rather than

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Response 45: EPA included the commenter's viewpoint in the docket for this permitting action.

Comment 46: Several commenters generally commented that the emissions from Veolia are harming the members of the community and EPA should not issue Veolia this permit.

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